the shares vest the provision postponing enjoyment becomes more or less nugatory. However, it is impossible to disregard the formidable body of case law. Modern cases are consistent where the postponement is not during the minority of the recipient. In these days I think that *Batsford v. Kebbell*[1], cannot be considered as an authority. Even in the 'minority" cases the older views against vesting no longer prevail (see *In re Lodwig*[2]). I think that the case is at the present time unarguable.

The answer must be that the share of Ong Biow Sim passed to his personal representatives.

Costs as prayed.

Order accordingly.

Solicitors: *R. C. H. Lim & Co.; Rodyk & Davidson; Braga & de Souza.*

TEOH BENG KIAT v. PUBLIC PROSECUTOR

[A. Cr. J. (Pretheroe J.) December 15, 1954]

[Ipoh — Criminal Appeal No. 61 of 1954]

Gaming — Common Gaming Houses Ordinance, 1953, s. 4(1)(c) — Assisting in carrying on a public lottery — Evidence — Benefit of the doubt.

The appellant had been charged on three separate counts under s. 4(1)(c) of the Common Gaming Houses Ordinance and had been convicted on all three. The facts briefly were: The appellant went to the Rex Hotel, Ipoh, and was allocated room No. 1. Between the occupation of the room by him and its vacation by the previous occupant it had been swept and tidied and the person who performed these tasks gave evidence to the effect that there was no paper bag in the room when he left it. Later, appellant left the room and proceeded to the lavatory and then to a telephone. While he was so engaged two acquaintances arrived and, as the door was not locked, they entered the room. Soon afterwards appellant returned to the room and almost immediately the Police, acting on information received, appeared and searched it. They found appellant and his two acquaintances also in the room sitting at a table and on the floor near the table was a paper bag. That bag contained a number of slips of paper which were proved to be betting slips.

The learned Magistrate held that the presumption under s. 11 of the Common Gaming Houses Ordinance must operate against the person who was the occupant of the room in question, and as the accused was the registered occupier of the room he found that a *prima facie* case had been established against him.

Counsel for the appellant argued that in the particular circumstances of the case there was no more evidence against the appellant than against the other two occupants of the room.

Held: as there appeared to be no evidence to disprove that one of the two acquaintances of the appellant took the bag to the room and also that as no facts were proved from which it would be safe to infer that appellant took the bag to the room, he should be given the benefit of the doubt.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kheng Kooi for the appellant.

T. R. Hepworth (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Pretheroe J. : — In this case the appellant had been convicted on three charges of carrying on a public lottery.

Briefly stated the facts were as follows. The appellant went to the Rex Hotel in Ipoh and was allocated room No. 1. Between the occupation of the room by appellant and its vacation by the previous occupant it had been swept and tidied and the person who performed these tasks gave evidence to the effect that there was no paper bag in the room when he left it. Later, appellant left the room and proceeded to the lavatory and then to a telephone. While he was so engaged two acquaintances arrived and, as the door was not locked, they entered the room. Soon afterwards appellant returned to the room and almost immediately the Police, acting on information received, appeared and searched it. They found appellant sitting at a table and on the floor near the table was a paper bag. That bag contained a number of slips of paper which were undoubtedly betting slips.

When the appeal was argued Mr. Lim Kheng Kooi elaborated one point only, viz. that in the particular circumstances of this case there was no more evidence against the appellant than against the other two occupants of the room.

I reserved judgment and have since considered the evidence very carefully. I have come to the conclusion that the two factors which influenced the Magistrate were that appellant was the registered occupier of the room and that he appears to have been the nearest of the three persons to the paper bag.

The appellant and the other two persons in the room at the time of the raid all gave evidence and all stated that they were entirely ignorant of the presence of the bag. This may well be doubted. But there appears to be no evidence to disprove that one of the two persons, and not the appellant, took the bag to the room. Likewise, as I read the evidence, no facts were proved from which it would be safe to infer that appellant took the bag to the room. In my opinion it is a case in which a reasonable jury would have given accused the benefit of the doubt. For this reason I think the submission made by Counsel is a good one. Consequently, I allow the appeal and set aside the three convictions. If the fine has been paid it will be refunded.

Appeal allowed.

Solicitor for the appellant: *Lim Kheng Kooi.*